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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/771,989	01/30/2001	Ichiro Ote	500.34601CC3	8452

20457 7590 04/16/2002

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EXAMINER

ELISCA, PIERRE E

ART UNIT	PAPER NUMBER
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2161

DATE MAILED: 04/16/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/771,989

Applicant(s)
Ichiro, Ote, et al.

Examiner
Pierre E. Elisca

Art Unit
2161



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE THREE MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 1/30/2001
- 2a) ☐ This action is FINAL.
- 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-15 is/are pending in the application.
- 4a) Of the above, claim(s) None is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13, 15 is/are rejected.
- 7) ☒ Claim(s) 14 is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) ☐ All b) ☐ Some* c) ☐ None of:

- ☐ Certified copies of the priority documents have been received.
- ☐ Certified copies of the priority documents have been received in Application No. _____.
- ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 2

- 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: _____

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Art Unit: 2161



Examiner Pierre Eddy Elisca
United States Department of Commerce
Patent and Trademark Office
Washington, D.C. 20231

DETAILED ACTION

1. This Office action is in response to Application No. 09/771,989, filed 1/30/2001.
2. Claims 13-15 are presented for examination.

Claim Objections

3. Claim 14 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Double Patenting

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple

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assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321© may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 13-15 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 11 respectively of U.S. Patent No. 6,044,476. Although the conflicting claims are not identical, they are not patentable distinct from each other because both define inventions that are obvious variations of each other achieving the same end result. Accordingly, it would have been obvious to those in possession of the invention defined by claims 13-15 of this Application No. 09/771,989 to observe that the limitations describe in claims 13-15 are already included in claim 11 of the U.S. Pat. No. 6,044,476. One of ordinary skill in the art would have realized that the omission of "sending a control signal to said service processor" is an artful labeling language that does not attribute any patentable differences. Therefore, as such it is an obvious variation of the invention that perform the same function as before. *In re Karlson*, 136 USPQ 184 (CCPA 1963).

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5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 13 and 15 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Kagei et al. (U.S. Pat. No. 5,204,955).

As per claims 13 and 15, Kagei substantially discloses a system/method for a network communication protocol specifically directed to implementation of fault management between managers, agents and test objects (which is seen to read as Applicant's claimed invention), comprising:
means for accepting an instruction for controlling and managing computer via a network (see., abstract);
controller for controlling converting instruction into signal (see., abstract, fig 17, col 9, lines 50-65, the term converting is readable as the change-state by the manager);
means for performing control signal (see., abstract). It is note that Kagei does not explicitly disclose that the test management is for controlling a power unit.

However, it obvious to recognize that the teaching of Kagei can also be implemented for testing a power unit. Accordingly, it would have been obvious to a person of ordinary skill in the art at the

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time the invention was made to include a power unit into the teaching of Kagei in order to provide an autonomous power unit test function.

CONCLUSION

5. Any inquiry concerning this communication from the examiner should be directed to Pierre Eddy Elisca at (703) 305-3987. The examiner can normally be reached on Tuesday to Friday from 6:30AM to 5:00PM.

If any attempt to reach the examiner by telephone is unsuccessful, the examiner's supervisor, James Trammell can be reached on (703) 305-9769.

Any response to this action should be mailed to:

Commissioner of Patents of Trademarks

Washington, D.C. 20231

or faxed to:

(703) 308-9051, (for formal communications intended for entry)

OR

(703) 305-9724, (for informal or draft communications, please label "PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA.,

Sixth floor (receptionist).

The Official Fax Numbers For TC-2100 Are:

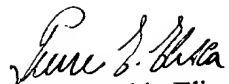
Serial Number: 09/771,989

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After-final (703) 746-7238

Official (703) 746-7239

Non-Official/Draft (703) 746-7240


Pierre Eddy Elisca

Patent Examiner

April 05, 2002